

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6173

BILL NUMBER: SB 23

NOTE PREPARED: Mar 15, 2010

BILL AMENDED: Mar 13, 2010

SUBJECT: State and Local Administration.

FIRST AUTHOR: Sen. Hershman

FIRST SPONSOR: Rep. Niezgodski

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Family and Social Services Administration; Dept. of Workforce Development-*

Helping Indiana Restart Employment (HIRE) program: The bill permits the Secretary of Family and Social Services (FSSA) to apply for and administer certain Temporary Aid to Needy Families (TANF) emergency funds. Upon approval of the TANF emergency fund application, it permits the commissioner of the Department of Workforce Development (DWD) to implement a subsidized employment program for unemployed or underemployed individuals. It also permits augmentation of the state TANF appropriation to match federal funding for the subsidized employment program.

Unemployment Insurance -

Employer Tax Rates: The bill delays changes in the taxable wage base and employer contribution rates for the unemployment compensation system to 2011. It provides for an employer contribution rate equal to the sum of the employer's contribution rate plus two percent unless all required contributions and wage reports have been filed within 31 days following the computation date and all contributions, penalties, and interest due and owing by the employer or the employer's predecessor for periods before and including the computation date have been paid.

Benefits & Claims: The bill removes the condition that an individual submit at least one application for work in each week for which the individual is claiming benefits.

Jury Duty: It provides that an otherwise eligible individual may not be denied unemployment benefits or be determined not able, available, and actively seeking work because the individual is responding to a summons

for jury service. The bill also requires the individual to obtain from the court proof of the individual's jury service and provide to DWD, in the manner the department prescribes by rule, proof of the individual's jury service.

Compliance Center: The bill deletes the statute requiring the Department of Workforce Development to establish an Unemployment Claims Compliance Center. It provides that, if an employer appeals an initial determination granting benefits to a claimant and the determination is reversed at least in part based on information that the employer failed to provide in response to a department request, the Employer's Experience Account (Account) shall be charged 50% of the benefits paid to the employee that the employee was not entitled to receive and for which the Account may be charged. The bill provides that if the employee repays the benefits received, the employer's account is credited with the amount of the employee's repayment up to 50% of the amount charged to the account.

Administrative Law Judges: The bill provides that each administrative law judge employed or used by the Department of Workforce Development must be an attorney who is licensed to practice law in Indiana.

UI Voluntary Contribution: The bill repeals a provision that permits an employer with a debit reserve ratio to elect once, after December 31, 2009, and before January 1, 2012, to make a voluntary contribution to the fund and receive a credit to the employer's account equal to 250% of the amount of the voluntary contribution.

Study Committee: The bill establishes an interim study committee to study the feasibility and value of indexing unemployment benefits and the unemployment insurance taxable wage base.

Department of Labor -

Worker Classification: The bill requires the Department of Labor to develop guidelines and procedures for investigating questions and complaints concerning employee classification. It requires the Department of Labor to do the following: (1) Make a presentation to the Pension Management Oversight Commission not later than October 1, 2010, outlining the proposed guidelines and procedures. (2) Make recommendations to the Legislative Council before November 1, 2010, concerning any legislative changes needed to implement the guidelines and procedures, including a budgetary recommendation for the implementation of the plan and a funding mechanism, to the extent possible. (3) Convert the guidelines and procedures to rules before August 1, 2011.

Cities, Counties, and Townships -

Hiring Preference for Laid-Off Police and Firefighters: The bill allows cities, counties, and townships to give preference in the hiring of police and fire department positions to laid-off policemen, firefighters, and emergency workers.

Indiana Economic Development Corporation (IEDC) -

New Employer Tax Credit: The bill provides a new employer tax credit for a corporation or pass through entity that after December 31, 2009, either locates or relocates the operations of a business enterprise in Indiana, incorporates or otherwise first organizes in Indiana, or expands its operation of a business enterprise in Indiana and employs at least 10 new qualified employees. It requires the IEDC to approve taxpayers for the credit. It also provides that the credit is 10% of the wages paid by the new Indiana business to qualified

employees during a 24-month period. The bill permits a carry forward of the credit for nine years.

Small Business Ombudsman & Compliance Officer: This bill requires the IEDC to: (1) designate an employee in the Small Business Division to serve as a small business ombudsman; and (2) designate an employee to serve as a compliance officer whose primary duties are to determine and report to the corporation whether each person that receives a job creation incentive granted by the corporation or another agency or instrumentality of the state (excluding any political subdivision or other unit of local government) complies with the terms and conditions of the person's incentive agreement.

EDGE Credit: This bill eliminates the requirement that an existing business must employ 35 or more employees to qualify for an EDGE credit. It provides a uniform definition of small business for certain regulatory review programs.

Job Creation Incentives Priority: The bill specifies that the IEDC, when developing job creation incentive packages to locate companies in Indiana, shall give weight, in the awarding or approving of job creation incentives, to business entities that locate in a county where individuals have become dislocated workers due to a permanent closure of a plant or facility or a significant reduction in the workforce. It specifies that the IEDC shall establish a program to ensure that dislocated workers from Indiana are given consideration for jobs created by business entities receiving a job creation incentive from the state or an instrumentality of the state. It also requires the IEDC to condition job creation incentives awarded or approved after March 31, 2010, on compliance with the program.

Incentive Agreement Provisions: The bill provides that the IEDC shall require an applicant for a job creation incentive to be granted by the IEDC after March 31, 2010, to enter into an agreement with the IEDC as a condition of receiving the incentive. It also requires the agreement to provide that the IEDC, after a finding that an applicant is employing fewer individuals than the applicant agreed to employ and subject to any confidentiality laws, shall hold a hearing to determine if the applicant shall be required to pay back to the state a portion of the incentive granted to the applicant under the agreement. The bill requires the agreement to provide that the applicant will pay back to the state the incentive that has been received by the applicant if the applicant moves or closes. It provides that in the case of an incentive granted by the IEDC that is awarded after March 31, 2010, if the IEDC determines that a recipient of an incentive has not complied with the representations that the recipient made in obtaining the incentive, the IEDC shall seek a refund or arrange other methods of reclaiming the value of the incentive granted by the IEDC from the recipient. The bill also specifies that the amount of the refund or reclaimed part must be in proportion to the degree of default by the recipient as determined by the IEDC. The bill allows the IEDC to waive or modify a recapture provision made with a person to whom the IEDC has awarded an incentive if the IEDC determines that the recipient has failed to meet a condition for receiving the incentive because of circumstances beyond the recipient's control.

State Economic Incentives and Compliance Report: The bill requires the IEDC's Economic Incentives and Compliance Report to include an annual report on the effectiveness of and compliance with all incentives granted by the IEDC. It also requires the IEDC to make certain information available.

Effective Date: Upon passage; January 1, 2010 (retroactive); July 1, 2010.

Explanation of State Expenditures:

Unemployment Insurance-

Employer Tax Rates: The provision delaying the start of the new rate schedule would not affect the state expenditures to the Unemployment Insurance Benefit Fund since the state is a reimbursable employer.

Compliance Center: Repealing the Unemployment Claims Compliance Center would not result in a savings since the federal government maintains that the implementation would make the state noncompliant and, also, DWD has not implemented the center.

Study Committee: This bill establishes a study committee consisting of four members: one appointed by the President Pro Tempore of the Senate, one appointed by the Minority Leader of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Minority Leader of the House of Representatives. The committee is to operate under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members. The committee is to study the feasibility and value of indexing unemployment benefits and the unemployment taxable wage base.

Benefits & Claims: The bill repeals the requirement that a claimant file one job application weekly. The removal of this provision is estimated to cost the Unemployment Insurance Fund about \$12 M annually and the state as a self-insurer about \$41,000 annually. The impact assumes about 1% of claimants fail to submit at least one application per week. There could be additional costs if this provision increases the time the claimant receives benefits. [The state paid about \$4.1 M in FY 2009, \$4.1 M in FY 2008, and \$5.9 M in FY 2007 to the Unemployment Insurance Fund as an employer.]

Jury Duty: The impact on the state as an employer would be minor. The impact on the UI Trust Fund would also probably be minor.

Administrative Law Judges: The provision that each administrative law judge employed or used by the DWD must be an attorney who is licensed to practice law in Indiana should have no fiscal impact since their administrative law judges are currently attorneys.

Department of Labor-

Worker Classification: The impact would depend on the guidelines and procedures for investigating questions and complaints concerning employee classification developed by the Department of Labor (DOL). DOL is to present the proposed guidelines and procedures to the Pension Management Oversight Committee by October 1, 2010, and to the Legislative Council by November 1, 2010, concerning any legislative changes needed to implement the guidelines, along with any budgetary recommendations.

Indiana Economic Development Corporation-

Summary: This bill will increase the administrative workload of the IEDC as a result of the provisions below. Existing staffing and resource levels, if currently being used to capacity, may be insufficient for full implementation. The additional funds and resources required could be supplied through existing staff and resources currently being used in another program or with new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions.

Additional IEDC Details:

Small Business Ombudsman: The bill requires the IEDC to designate an employee in the Small Business Division to be the small business ombudsman. The bill requires the IEDC to provide staff support to the ombudsman and outlines the duties to be carried out by the ombudsman. The bill also requires the small business ombudsman to review proposed rules and participate in rule-making actions that affect small businesses pursuant to current statute requiring such reviews.

Full-Time Compliance Officer: The bill requires the IEDC to designate an employee to serve in a full-time position as a compliance officer. This person will monitor job creation incentives granted by the IEDC or another agency to ensure compliance with the terms and conditions of incentive agreements. Currently, compliance monitoring of agreements is performed by several staff at IEDC.

Job Creation Incentives Priority: The IEDC is required to establish a program to ensure that dislocated workers from Indiana are given consideration for jobs created by business entities receiving a job creation incentive from the state. Beginning in April 2010, the IEDC will condition incentives awarded or approved upon compliance with this program.

This bill also requires the IEDC to give weight in the awarding or approving of job creation incentives to business entities that locate in an area where individuals have become dislocated workers due to a permanent closure of a plant or facility, or a significant reduction in the workforce.

Incentive Agreement Provisions: Beginning in April 2010, job creation incentive agreements entered into by recipients and the IEDC must include the following requirements:

- (1) the number of individuals that are expected to be employed by the applicant;
- (2) that the applicant will file with the compliance officer an annual compliance report concerning (1);
- (3) that if the applicant is found to be employing fewer individuals than agreed upon under (1), a hearing will be held to determine if the applicant shall be required to pay back to the state a part of the incentive granted under the agreement; and
- (4) that the applicant will pay back to the state the incentive that has been received if the applicant moves.

State Economic Incentives and Compliance Report: Beginning with the 2010 State Economic Incentives and Compliance Report, the IEDC must include summary statistics on the effectiveness of and compliance with all incentives granted. Specifically, the report must describe the terms and conditions of incentives provided and any penalties imposed for failure to comply with the terms of incentive agreements.

EDGE Credits: The bill could potentially broaden eligibility and expand the applicant pool for EDGE credits relating to job retention projects. This may increase the number of applications for EDGE credits and the number of EDGE credits awarded annually, creating additional administrative demands on the IEDC. Based on recent quarterly employer reports for unemployment compensation taxes, there could potentially be approximately 100,000 firms in the state that are employing 1 to 34 employees.

Family and Social Services Administration and Department of Workforce Development-

HIRE Program: Summary: The maximum increase in state expenditures, if the HIRE program is implemented, is expected to be \$20.8 M to draw down approximately \$104 M in available federal funds. Additionally, if the HIRE program is implemented, the workload of the FSSA and DWD will increase.

Additional Information for the HIRE Program:

This bill allows the Secretary of the FSSA to apply to the U.S. Department of Health and Human Services for the maximum reimbursement available to the state under the American Recovery and Reinvestment Act (ARRA) of 2009 TANF emergency funds. These funds are to be used for nonrecurrent short-term benefits and the HIRE program. If approved, FSSA may administer funding to the HIRE program.

If FSSA elects to implement the HIRE program, the assistance of the DWD will most likely be required. If the program is implemented, both agencies will be required to promulgate rules regarding the administration and qualifications for the HIRE program. This will increase the workload of both FSSA and DWD. Additionally, under the provisions of the bill, the Secretary of FSSA would be required to quarterly report to the Budget Committee any progress made on implementing the use of ARRA TANF emergency funds and the sources of state match money used for the program.

The bill also allows for the augmentation of the budget to allow state funds to be used to provide the state match money to obtain the maximum amount of federal TANF emergency funds. [Note: Any unused funds that are from appropriation augmentations intended to draw down federal funds revert to the fund they were originally diverted from. Additionally, the funds can come from any state fund that is not restricted by federal law or the terms of a contract, grant, loan, gift, or bequest.] If the HIRE program is implemented, state expenditures may not necessarily increase, but reversions to the General Fund may decrease in order to meet the federal match requirement to the extent unused or non-obligated state funds are diverted for purposes of leveraging ARRA TANF emergency funding.

Under the federal ARRA TANF emergency program, emergency funds are available to states until October 2010. In order for the state to receive TANF emergency funds, the state would be required to spend state funds to draw down the federal match. The state is eligible to draw down a maximum of \$104 M in federal ARRA TANF emergency funds before October 1, 2010. If the state is approved to spend the maximum \$104 M, state funds of \$20.8 M may be required to meet the 20% state matching requirement. Under the ARRA TANF emergency fund guidelines, third-party funding (e.g., foundation grants, private funding) can be counted as the maintenance of effort (MOE) and meet the 20% increase in subsidized employment spending requirement. It is not known if all the wages paid to program participants would be eligible to count as the state MOE (as this would be left to the discretion of the Dept. Of Health and Human Services). However, this ability could minimize any expenditure the state would incur to draw down the approximately \$104 M in federal funding available through the ARRA TANF emergency funds.

Department of State Revenue-

The Department of State Revenue (DOR) will incur additional expenses to revise tax forms, instructions, and computer programs to reflect provisions in the bill changing eligibility for the EDGE Credit and establishing the New Employer Tax Credit. The DOR's current level of resources should be sufficient to implement these changes.

Explanation of State Revenues:

Unemployment Insurance-

Employer Tax Rates: The bill would reduce the revenue to the Unemployment Insurance Benefit Trust Fund. The reduction in revenue is estimated to be between \$314 M and \$357.6 M in CY 2010.

UI Voluntary Contribution: The repeal of the provision that permits an employer with a debit reserve ratio

to elect once, after December 31, 2009, and before January 1, 2012, to make a voluntary contribution to the fund and receive a credit to the employer's account equal to 250% of the amount of the voluntary contribution could reduce contributions into the fund. The balance of all debit reserve ratio employers is about -\$1.8 B. Each 1% of voluntary contributions employers might have made would have generated \$18 M of one-time income to the fund, and employers would receive a reduction in their negative balance of about \$45 M.

Background: The following is the amount states have borrowed as of February 16, 2010, from the federal government to pay unemployment benefits.

Alabama	\$200,724,827.22
Arkansas	\$278,833,916.95
California	\$7,119,365,227.37
Colorado	\$45,105,000.00
Connecticut	\$295,261,478.04
Florida	\$1,239,100,000.00
Georgia	\$199,000,000.00
Idaho	\$140,635,625.22
Illinois	\$1,582,176,341.88
Indiana	\$1,649,784,846.70
Kentucky	\$661,600,000.00
Massachusetts	\$41,864,979.06
Michigan	\$3,447,282,333.32
Minnesota	\$416,813,948.76
Missouri	\$556,229,802.21
Nevada	\$219,476,394.20
New Jersey	\$1,209,701,783.38
New York	\$2,462,228,500.81
North Carolina	\$1,850,837,380.30
Ohio	\$1,955,417,799.00
Pennsylvania	\$2,307,662,071.16
Rhode Island	\$158,971,517.00
South Carolina	\$771,287,283.00
South Dakota	\$12,944,423.67
Texas	\$1,628,708,179.95
Virgin Islands	\$11,671,975.08
Virginia	\$204,192,171.00
Wisconsin	\$1,130,986,340.34
Total	\$31,797,864,145.62

For CY 2009 the Unemployment Insurance Benefit Fund received \$521.4 M from employers, \$0.5 M in interest, paid \$1,865.3 M in benefits, and had administrative expenses of \$14.9 M. The ending balance on December 30, 2009, was a negative \$1,469.8 M. The loans to states from the federal government for unemployment benefits will not begin accruing interest until at least December 31, 2010.

Indiana Economic Development Corporation-

New Employer Tax Credit: The bill establishes a temporary nonrefundable tax credit for a new or existing corporation or pass through entity that employs at least 10 qualified employees as a result of locating a new

business enterprise in Indiana, relocating an existing business enterprise from another state to Indiana, or expanding an existing business enterprise in Indiana after December 31, 2009. The tax credit must be approved by the IEDC. The tax credit is equal to 10% of the wages paid each month to qualified employees for a period of 24 consecutive months following the credit approval by the IEDC and during which time the corporation or pass through entity complies with all the credit requirements. If a corporation or pass through entity approved for credits fails to employ at least 10 qualified employees or comply with other credit requirements during the 24-month period, the credit ceases and cannot be claimed for wages paid after that point. The bill authorizes the IEDC to approve applications for credits until January 1, 2013.

The total credits awarded each year under this provision would depend on a number of factors, including the number of jobs created during the recovery period that qualify for the credit, the response rate by employers applying for the credit, and determinations by the IEDC that applicants qualify for the credit. If the IEDC approves credits each year from 2010 to 2012 for 5,000 qualified employees earning the statewide median annual wage of about \$30,000, the revenue loss from these credits could total \$15 M in FY 2011; \$30 M in FY 2012; \$30 M in FY 2013; and \$15 M in FY 2014. (Note: For instance, the revenue loss for FY 2011 would be attributable to 1st year credits for the 1st business cohort awarded credits in 2010; and the revenue loss for FY 2012 would be attributable to the 2nd year credits for the 1st business cohort and the 1st year credits for the 2nd business cohort awarded credits in 2011.) The revenue loss under this scenario assumes that all credit recipients obtain credits for a full 24-month period and have tax liabilities against which to claim credits. If taxpayers are unable to claim credits in the year the credits are earned, the revenue loss could be shifted to subsequent years as credits are carried forward. The bill allows excess credits to be carried forward for up to nine years, but prohibits carryback or refund of the credit.

The tax credit may be claimed against the Adjusted Gross Income Tax, the Insurance Premiums Tax, or the Financial Institutions Tax liability. The bill specifies that a "qualified employee" is a full-time employee who is an Indiana resident and who is employed by the corporation or pass through entity receiving the tax credits for the first time at the newly located, relocated, or expanded business enterprise. A qualified employee does not include: (1) an individual who is more than a 5% shareholder, partner, member, or owner of the corporation or pass through entity receiving tax credits; (2) individuals who are rehired; (3) individuals employed to fill positions vacated as the result of a layoff that occurred during the two years prior to receiving tax credits; or (4) individuals employed in the same business operation before and after a change of business ownership.

Violation of IEDC Incentive Agreements: Beginning with incentives granted in April 2010, if applicants do not comply with the representations that they made to obtain the incentives, the IEDC shall seek a refund or arrange other methods of reclaiming the value of the incentives. Any amounts refunded or reclaimed will be in proportion to the degree of default by the recipient as determined by the IEDC. The fiscal impact is indeterminable because it will depend on the extent to which applicants violate the provisions of their incentive agreements and are required to pay back portions of the incentives based upon determinations at hearings.

The bill also provides that the IEDC may waive or modify a recapture provision in an agreement if conditions were not met because of circumstances beyond the recipient's control. The circumstances specified include: (1) natural disaster; (2) unforeseen industry trends; (3) lack of available labor force; (4) loss of a major supplier or market; or (5) another circumstance as determined by the IEDC.

EDGE Credits: The bill eliminates the requirement that businesses must employ at least 35 employees to be eligible for EDGE credits for job retention projects beginning in tax year 2010. This change could increase

the number of EDGE credits awarded for projects that lead to job retention, which could potentially increase the revenue loss from EDGE credits. However, the magnitude of this loss is indeterminable.

Background Information - Under current statute, businesses that (1) create new investment and jobs in Indiana or (2) undertake projects to retain existing jobs in Indiana are eligible for EDGE credits. As it applies to investment that creates new jobs, the EDGE Program is designed to provide a revenue-neutral incentive for businesses to create new investment and jobs in Indiana. Such businesses receive credits equal to the individual income taxes withheld for employees filling the newly created positions. Since revenue from these employees would not have been collected in the absence of the new development, the state does not incur a net loss by redistributing the incremental income tax revenue as tax credits to businesses. For job retention projects, no new revenue would be realized since no new jobs would be created. As a result, EDGE credits for job retention are paid from existing revenues, resulting in a net loss to the state equal to the amount of EDGE credits granted to businesses for job retention. However, if a business were to select a more profitable alternative project site and move out of Indiana, there could be an even greater loss of revenue from the reduction in individual (employee's) and corporate taxes.

EDGE credits for job retention were awarded for the first time in 2003. The EDGE credit amounts (for job retention) awarded in FY 2004 totaled approximately \$3 M and in FY 2005 totaled approximately \$2.8 M. There was a \$5 M cap for the aggregate amount of EDGE credit awards during both fiscal years. In FY 2006, the aggregate amount of EDGE credits that could be awarded for a state fiscal year was increased to \$10 M. EDGE credits for retention totaled \$1 M in FY 2006 and \$370,000 in FY 2007. About \$3.8 M has been awarded for FY 2010.

EDGE credits are awarded for a duration of up to 10 years during which the credit amounts may be used. EDGE credits may be taken against a taxpayer's AGI Tax, Insurance Premiums Tax, or Financial Institutions Tax liabilities. The duration of the credit may not exceed 10 taxable years. Revenue from the AGI Tax on corporations, the Insurance Premiums Tax, and the Financial Institutions Tax is distributed to the state General Fund.

Explanation of Local Expenditures:

Unemployment Insurance-

Employer Tax Rates and Benefit Changes: The impact on local government of changes to the unemployment insurance benefits and contribution rates would be as an employer.

Cities, Counties, and Townships-

Hiring Preference for Laid-Off Police and Firefighters: The bill would provide cost savings for training new police officers and firefighters. While the officer or fire personnel would have to apply for the position, rather than be transferred, salary expense for more experienced personnel may be at the upper boundary of the salary range. The cost savings or additional expenditures would depend on the decisions of the jurisdiction hiring the laid-off police officer or firefighter.

Background: If a police officer is not employed as a police officer for less than two years, the officer is not required to retake basic training. Local training requirements may apply, however. The Education Board of the Department of Homeland Security certifies fire personnel that have successfully completed the minimum basic training requirements.

Explanation of Local Revenues:

State Agencies Affected: FSSA; DWD; IEDC; DOR.

Local Agencies Affected: Local units.

Information Sources: DWD data, Eric Shields, IEDC, 317-234-3997.

Fiscal Analyst: Chuck Mayfield, 317-232-4825, Jim Landers, 317-232-9869, Jessica Harmon, 317-232-9854, Bill Brumbach, 317-232-9559.